



# CITY OF LODI

## COUNCIL COMMUNICATION

AGENDA TITLE: Professional Services Contract for Central City Revitalization Project

MEETING DATE: June 14, 1995

PREPARED BY: Public Works Director

**RECOMMENDED ACTION:** That the City Council authorize the City Manager to execute a professional services contract with Freedman Tung & Bottomley (FTB) for the design of the Central City Revitalization Improvement District Project and related City street and drainage improvements.

**BACKGROUND INFORMATION:** On April 12, 1995, the City Council unanimously approved the revised concept plan for the Central City Revitalization Project. The plan calls for the following improvements for which the cost will be split 50/50 between the City and property owners in the assessment district.

- School Street - Lodi Avenue to Locust Street - New lighting and trees, new trash receptacles and benches, mini-plaza at Oak Street/School Street, custom kiosks, new sidewalks and planters, entrance gateway and corner bow-outs
- Pine Street - Church Street to Sacramento Street - new lighting, benches, trash receptacles and corner bow-outs
- Oak Street - Church Street to Sacramento Street - new lighting and trees, benches, trash receptacles and corner bow-outs
- Cherokee Lane - Almond Drive to Pioneer Drive - lighting, median and trees and median upgrade

(Pine Street and Oak Street improvements to be designed and bid; construction will depend on project budget.)

The construction budget for the above District work is \$4.8 million.

In addition, the following improvements have been planned in the Capital Improvement Program and should be added to the project to take advantage of the District work and avoid disruption of the new improvements in the near future

- School Street - Lodi Avenue to Locust Street - replace curb and gutter and reconstruct pavement, minor utility and service lateral extensions, convert traffic signals at Pine Street/School Street and Pine Street/Sacramento Street to actuated operation
- Cherokee Lane - Century Boulevard to Pioneer Drive - pavement overlay, new curb and gutter at missing sections (design only unless Council orders installation), storm drains from Vine Street to North of Tokay Street and in the area north of Lodi Avenue.

APPROVED: \_\_\_\_\_

THOMAS A. PETERSON  
City Manager



recycled paper

The preliminary construction estimate for the above City work is \$1.615 million, to be funded by Street, Drainage and applicable utility funds.


As directed by City Council in April, staff has worked with the design team led by FTB to prepare a scope of work and cost for the design of the project. This alone is a major effort for a project totaling over \$6.4 million and staff had targeted the regular Council Meeting on June 21, 1995 as the date to approve the contract. However, Mr. Freedman, who strongly wished to be present, could not make that date nor the following Council Meeting. Rather than delay the project, we have brought the item to the special June 14 meeting. However, this advancement of the date has meant the final documents are not ready as of this writing on June 8.

The draft contract submitted by FTB is attached and is still under review by the Interim City Attorney. Given the nature of the design work and construction to be done, additional insurance requirements will be added. The final document will, of course, be approved as to form by the Interim City Attorney, and, with Council approval, executed by the City Manager. The detailed scope of work for FTB and the subconsultants is over forty pages long and is not included. A summary is attached.

The total cost for the design, including a small allowance for contingencies is \$920,000 including the design for the City improvements. (The contract calls for payment on a time-and-material basis with a "not to exceed" maximum.) The District portion is approximately \$750,000 which will be split 50/50 with the City. Construction services will be addressed prior to award of the construction contract. The cost for the District work is somewhat higher than anticipated by staff; however, given the "custom" nature of much of the work and the detailed attention we feel FTB will give the project, the design cost is reasonable in relation to the construction budget.

Staff is still working on the formation of the Assessment District and will be returning to Council with additional information and for various actions during the summer and for final adoption in the fall. We plan to incorporate into these actions details of the various incentive programs described in the concept plan. Given the estimated design time, the project should be ready to bid in the winter and should be under construction as soon as weather permits in spring 1996. One consequence of this schedule is that the anticipated Federal funding (\$290,000) to go toward the street lighting on Cherokee Lane will not be available. Given the additional construction cost when Federal requirements are added to the project (they would apply to the whole project) and the lengthy review and processing time we have been experiencing with these projects, this may be a blessing in disguise.

FUNDING: Capital Outlay Fund, various Street, Drainage and Utility funds

  
for Jack L. Ronsko  
Public Works Director

Prepared by Richard C. Prima, Jr., City Engineer

JLR/RCP/lm

Attachments

cc: Freedman Tung & Bottomley  
Central City Revitalization Task Force

DRAFT

PROFESSIONAL CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made by and between FREEDMAN TUNG & BOTTOMLEY, a California sole proprietorship, whose address is 47 Kearny Street, Suite 500, San Francisco, California, 94108 (hereinafter referred to as "CONSULTANT") and \_\_\_\_\_ (hereinafter referred to as "CLIENT").

RECITALS

- A. CLIENT is in the process of evaluating various district revitalization possibilities (hereinafter referred to as the "Project") and is in need of the special expertise of CONSULTANT, and for this purpose is retaining CONSULTANT to provide urban design and urban planning services.
- B. CONSULTANT has agreed to provide such urban design and urban planning services in order to assist CLIENT in establishment and implementation of \_\_\_\_\_ The geographic area(s) which CONSULTANT will study under this AGREEMENT is \_\_\_\_\_ (hereinafter referred to as the "STUDY AREA").

NOW, THEREFORE, in consideration of the recitals, mutual promises, covenants and conditions herein, the parties agree as follows:

1. CONSULTANT Responsibilities. Upon request by the CLIENT, CONSULTANT shall provide to CLIENT professional planning, urban design and other related CONSULTANT services in accordance with the terms of this AGREEMENT, as set forth herein and in EXHIBIT "A", Scope of Services, and EXHIBIT "B", CONSULTANT Fee and Compensation Schedule. The services set forth in EXHIBIT "A" are the Basic Service of this AGREEMENT. Services other than those set forth in EXHIBIT "A" are ADDITIONAL SERVICES.
2. CLIENT Responsibilities. Unless otherwise specified in this AGREEMENT or in a Work Order signed by CLIENT AND CONSULTANT, CLIENT shall be responsible for the following:
  - a. Providing to CONSULTANT base data including maps, planning information, civil engineering, and geotechnical, hydrologic, utility, market, shopper, merchant, or any other relevant surveys. CLIENT acknowledges that CONSULTANT will be entitled to rely on the accuracy of all information supplied to it by CLIENT.
  - b. Organization and coordination of City Council, Redevelopment Agency, and any other public meetings and presentations.
  - c. Assistance in the evaluation of the fiscal implications of proposals.

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- d. Coordination between the CONSULTANT and development/ design teams on other projects within the STUDY AREA.
- e. Coordination with other related agencies and entities.
- 3. CLIENT Project Representative. The CLIENT shall designate in writing a person to act as CLIENT's representative with respect to the CONSULTANT's services to be performed under this AGREEMENT; and such person shall have complete authority to transmit instructions, receive information, interpret and define CLIENT's policies and decisions with respect to services covered by this AGREEMENT.
- 4. CONSULTANT Principal in Charge. It is agreed and understood by CLIENT and CONSULTANT that \_\_\_\_\_ will be the Principal in Charge of the work set out in EXHIBIT "A". Any change in the Principal in Charge shall be subject to approval by the CLIENT.
- 5. Subconsultants. As provided in EXHIBIT "A" CONSULTANT may utilize the services of subconsultants (such as market, traffic and/or engineering consultants) to undertake specific work tasks. Fees for services provided by subconsultants, identified in EXHIBIT "A", shall be compensated as set forth in EXHIBIT "B".
- 6. Termination of Contract With or Without Cause. This AGREEMENT may be terminated at any time by either party upon giving seven (7) days notice in writing.
- 7. CONSULTANT Participation in Private Projects. CONSULTANT agrees that it shall not participate in private development projects in the STUDY AREA during the term of this AGREEMENT without obtaining prior written approval from CLIENT.
- 8. Licenses, Permits, etc. CONSULTANT represents and warrants to CLIENT that it has all licenses, permits, qualifications and approvals which are required for CONSULTANT to practice its profession. CONSULTANT represents and warrants to CLIENT that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this AGREEMENT any licenses, permits, and approvals which are required for CONSULTANT to practice its profession.
- 9. Time. CONSULTANT shall devote such time to the performance of services pursuant to this AGREEMENT as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this AGREEMENT.
- 10. Independent CONSULTANT. CONSULTANT and CLIENT agree that CONSULTANT is an independent contractor with respect to CLIENT and that the provisions of this AGREEMENT are not intended to create the relationship of employer/employee between CLIENT and CONSULTANT.

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11. CONSULTANT Not An Agent. Except as set forth in this AGREEMENT or as CLIENT may specify in writing, CONSULTANT shall have no authority, express or implied, to act as an agent on behalf of CLIENT or to bind CLIENT to any obligation.

12. Assignment Prohibited. CLIENT and CONSULTANT, respectively, bind themselves, their officers, partners, employees, heirs, successors, assigns and legal representatives to the other party to this AGREEMENT and to the officers, partners, employees, heirs, successors, assigns and legal representatives of such other party with respect to each and every covenant of its AGREEMENT. Neither CLIENT nor CONSULTANT shall assign, sublet or transfer any interest or obligation in this AGREEMENT without the written consent of the other.

13. Personnel. In the event that CLIENT, in its sole discretion, at any time during the term of this AGREEMENT, desires the removal of any of CONSULTANT's personnel CONSULTANT shall immediately upon receiving notice from CLIENT of such desire remove such person(s) from the Project.

14. Standard of Performance. CONSULTANT shall perform all services required pursuant to this AGREEMENT in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices its profession. All instruments of service that CONSULTANT delivers to CLIENT pursuant to this AGREEMENT shall be prepared in a professional and workmanlike manner and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession.

15. Insurance. The CONSULTANT shall obtain and maintain during the period of this AGREEMENT public liability and property damage insurance as follows:

PUBLIC LIABILITY: \$1,000,000  
PROPERTY DAMAGE: \$1,000,000

16. Governmental Regulations. To the extent that this AGREEMENT may be funded by fiscal assistance from another governmental entity, CONSULTANT shall comply with applicable rules and regulations to which CLIENT is bound by the terms of such fiscal assistance program. CLIENT agrees to provide CONSULTANT with such rules and regulations.

17. Changes to Scope of Work. No substantial changes, as determined by CONSULTANT, in the scope of work as described in EXHIBIT "A" shall be made without prior written approval of both CLIENT and CONSULTANT. Changes in the scope of work resulting in ADDITIONAL SERVICES will be reimbursed at CONSULTANT's hourly billing rates as set forth in EXHIBIT "B", or as set forth in an executed Work Order. CONSULTANT shall also be reimbursed for its REIMBURSABLE COSTS, as set forth in EXHIBIT "B".

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18. Time of Performance. The services of CONSULTANT are to commence no later than five days after execution of this AGREEMENT. No written notice to commence work will be required. CONSULTANT agrees to carry out the work as expeditiously as is consistent with appropriate professional procedures.

19. Mediation. Claims, disputes or other matters in question between the parties to this AGREEMENT arising out of or relating to this AGREEMENT or breach thereof, shall be subject to mediation conducted under the auspices of a recognized neutral third-party professional mediation service, in a good faith effort to negotiate a resolution of the dispute, prior to undertaking any legal action. The selection of the mediation service shall be acceptable to the parties and the cost of the mediation service shall be borne equally by the parties.

20. Legal Action. The CONSULTANT shall be compensated for any time involved in any legal action, where CONSULTANT is not a party, for preparing to serve or serving as a witness, at the request of or on behalf of CLIENT in connection with CONSULTANT's work under this AGREEMENT. Such compensation shall be in addition to the maximum fee specified in this AGREEMENT.

21. Ownership and Use of Plans, Reports and Other Documents. The CLIENT acknowledges that the CONSULTANT's plans, reports and other documents are instruments of professional services for use solely with respect to this Project. The plans, reports and other documents prepared under this AGREEMENT shall become the Property of the CLIENT upon completion of this Project and upon payment of all amounts due the CONSULTANT. The CONSULTANT, however, shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights including the copyright.

Should the CLIENT or any other person, firm or legal entity use, reuse or modify the CONSULTANT's plans, reports or other documents prepared under this AGREEMENT, for other than the CLIENT's use in completing the Project, the CLIENT agrees to indemnify, defend and hold the CONSULTANT harmless from and against any and all claims, suits, demands, losses and expenses, including reasonable attorneys' fees, accruing or resulting to any and all persons, firms, or any other legal entity, on account of any damage or loss to property or persons, including death, arising out of such unauthorized use, reuse or modification of the CONSULTANT's plans, reports and other documents, except where the CONSULTANT is found to be solely liable for such damages or losses by a court or forum of competent jurisdiction.

22. Hazardous Materials. The CONSULTANT and its subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

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23. Responsibility for Construction Means. The CONSULTANT shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the project. The CONSULTANT shall not be responsible for the Contractor's schedules or failure to carry out its duties. The CONSULTANT shall have no control over or charge of acts or omissions of the Contractor, Subcontractor, or their agents or employees, or of any other person performing portions of the Work.

23. Hold Harmless. The CONSULTANT shall hold the CLIENT harmless from all claims of third persons for damages arising out of the sole negligent acts or omissions of the CONSULTANT and its agents.

25. Attorneys' Fees. Should any legal proceeding, including mediation, be commenced between the parties to this AGREEMENT seeking to enforce any of its provisions, including, but not limited to, the fee provisions set forth in EXHIBIT "B", the prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' fees which shall be determined by the court or forum in such proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party which dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

26. Governing Law. This AGREEMENT shall be governed by the law of the State of California.

27. Third Parties. Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or CONSULTANT.

28. Entire Agreement. This AGREEMENT, which includes EXHIBITS "A" and "B", represents the entire and integrated agreement between the CLIENT and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended only by written instrument signed by both CLIENT and CONSULTANT. If any term, provision or condition of this AGREEMENT is held to be invalid, void or unenforceable by a court or forum of competent jurisdiction, then the remaining provisions shall continue in full force and effect.

IN WITNESS WHEREOF, this AGREEMENT is executed by FREEDMAN TUNG & BOTTOMLEY and by \_\_\_\_\_.

PROFESSIONAL CONSULTING SERVICES AGREEMENT

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Dated: \_\_\_\_\_

FREEDMAN TUNG & BOTTOMLEY

By \_\_\_\_\_

Dated: \_\_\_\_\_

By \_\_\_\_\_

Add City Attorney line

MAY-22-1995 08:43

415 291 9633

P.07

MAY-22-1995 10:15

209 333 6807

93%

TOTAL P.07  
P.07



**FREEDMAN  
TUNG &  
BOTTOMLEY**

Urban Design & Planning  
District Revitalization  
Street & Plaza Design

## MEMORANDUM

**VIA FAX**

**DATE:** June 1, 1995  
**TO:** Mr. Rich Prima  
City Engineer  
City of Lodi  
**FAX #:** (209) 333-6807  
**FROM:** Michael Freedman  
**RE:** Central City Street Improvements - Scope of Services **DRAFT**

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Rich: As requested by the City Council, we have prepared the attached Scope of Services for the Central City Street Improvements Project. That project implements the designs approved by Council for the Downtown and Cherokee Lane areas of the Central City. Under the auspices of this Scope of Services, Freedman Tung & Bottomley will provide the City of Lodi with the combined services of nine specialized design and engineering firms, as follows:

- |    |                           |   |
|----|---------------------------|---|
| 1. | Freedman Tung & Bottomley | Project Management<br>Streetscape Design<br>Special Features Design |
| 2. | Cella Barr Associates     | Civil engineering<br>Electrical engineering                         |
| 3. | Baumbach & Piazza         | Land Survey<br>Utility Coordination                                 |

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Suite 500  
San Francisco, CA  
94108-5522  
415.791.3455

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- |    |                                    |                          |
|----|------------------------------------|--------------------------|
| 4. | Sierra Engineering Group           | Structural Engineering   |
| 5. | Kleinfelder, Inc.                  | Geotechnical Engineering |
| 6. | Herrick Rothwell Schweiger-Nichals | Specifications           |
| 7. | ISC Group                          | Irrigation               |
| 8. | Barrie Coate & Associates          | Horticulture             |
| 9. | Ray Vate Graphics                  | Graphic Design           |

With the exception of Bannbach & Piazza of Lodi, we have collaborated with all the firms listed on the preparation of construction documents for similar streetscape projects.

The Scope begins with a Summary spreadsheet detailing total fees for all design and engineering services. Back up detail for task descriptions, staffing and budget figures are presented in the accompanying information for your review. All back-up Scope of Services information is organized by firm/discipline.

We would like to call your attention to the following aspects of the Scope of Services in order to confirm that various services have been either included or eliminated, as discussed in one or another of our telephone conversations:

1. Utilities:
  - a. Location. The Scope of Services assumes that the location of existing utilities is known - that the land surveyor will, without the need of potholing, be able to obtain information as to the accurate location of all utility features for the project areas. We are therefore assuming that once the survey base maps are completed, there will not be a stream of new discoveries that will cause us all to have to continuously update our layout drawings.
  - b. Installing or moving utilities. This Scope of Services contains no provision for the installation or relocation of gas, electric, water, telephone, cable, storm water or sanitary sewer utility lines. Any such added services will be performed on a time and materials basis.
  - c. Renovation of selected storm drain facilities along Cherokee lane. We have not received a list of such desired renovations, as requested. It is our understanding that you have discussed your requirements by telephone with Cella Barr Associates. Their scope does contain a section for some storm drain work on Cherokee Lane.
2. It has come to our attention that the local gas utility has offered to provide certain materials and services in the event that gas fueled street lighting could be made part of this streetscape renewal. The offer is interesting, and we believe it should be pursued. This Scope of Services contains no services related to that eventuality, however. In order to move forward on that item we will need to be given a utility representative contact from whom we can clarify the particulars of the offer. We will need to analyze the potential costs and benefits to the project and report back to City Staff and Council. Services related to this opportunity will be rendered at the request of the City Engineer, and will be invoiced separately on a time and materials basis.

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3. Please make careful note of the fact that the City will be supplying at least two physical items to the selected construction contractor for installation, as follows:
  - a. Grapevine sculpture - We will select a recommended sculptor. The sculptor approved by the City will contract separately with the City for the production of a small mock-up (the cost of the mock-up is included in this Scope) and for the final sculptural piece. We will direct the design of the piece the whole way through, with City approval bench marks, as noted in the Scope. The project Specifications will require the contractor to install the sculpture provided to the job by the City.
  - b. Kiosk posters. Our team will design the two posters for installation in the kiosk on site. The City/Downtown Task Force will review the design at bench marks noted in the Scope. The production of the physical posters will be paid for separately by the City. The City will supply the kiosk subcontractor with the posters for installation. The project Specifications will require the kiosk subcontractor to install the posters.

We hope you find all these materials clear and easy to review. If you have any questions or would like to have us modify the services we are providing, please do not hesitate to call. I will be in the office beginning around 1 PM on Monday, and all morning on Tuesday. We are confirmed to attend the June 14 City Council Meeting when Council reviews the Scope of Services. We will request that Cell Barr Associates attend as well. -MF